

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW JERSEY**

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| OCWEN FEDERAL SAVINGS BANK, | : |                                |
| FSB                         | : | Civil Action No. 05-5106 (FLW) |
| Appellant,                  | : | Bankruptcy Case No. 02-53639   |
|                             | : |                                |
| v.                          | : |                                |
|                             | : |                                |
| EDDY JENNINGS,              | : | <b>OPINION</b>                 |
| Appellee.                   | : |                                |
|                             | : |                                |

**WOLFSON, District Judge**

Presently before the Court is an appeal by Ocwen Federal Savings Bank, FSB (“Appellant” or “Ocwen”) pertaining to a September 7, 2005 Order by the Honorable Judge Raymond T. Lyons, U.S.B.J., in Bankruptcy Case No. 02-53639 denying Ocwen's Motion for Reconsideration or in the Alternative to Set a Final Accounting. This Court has jurisdiction pursuant to 28 U.S.C. § 158(a). Since the filing of the appeal, Ocwen has failed to file a brief in this matter. For the reasons set forth below, Ocwen’s appeal is dismissed.

## I. BACKGROUND

On August 4, 2005, Appellant filed a Motion for Reconsideration of an Order Approving Refinancing pursuant to 11 U.S.C. § 364. On September 7, 2005, Judge Lyons filed an Order denying Ocwen's Motion for Reconsideration or in the alternative to Set a Final Accounting. On October 25, 2005, Ocwen appealed Judge Lyon's September 7 Order. According to Federal Rule of Bankruptcy Procedure 8009(a)(1), Ocwen was required to file his brief within fifteen days of the entry of the appeal on the docket. Plaintiff did not timely file and did not seek an extension

from the Court. Indeed, as of August 16, 2006, Plaintiff has not filed anything with this Court relating to his bankruptcy appeal. On July 10, 2006, this case was reassigned from Judge Chesler to this Court. On July 13, 2006, I ordered Appellant to show cause on August 10, 2006 why this case should not be dismissed as a result of his failure to file briefing in this matter. Appellant did not file any papers with the Court nor did Appellant appear on the designated date.

## II. DISCUSSION

A district court has discretion to dismiss an appeal from an order of the Bankruptcy Court for an appellant's failure to file a brief in a timely fashion. See Wallace v. Graphic Management Associates, 2006 WL 2038746 (3d Cir. July 21, 2006); In re Jewelcor Inc., 11 F.3d 394, 397 (3d Cir.1993). The Court may also dismiss an appeal for an appellant's failure to prosecute his case. See Fed. R. Civ. P. 41(b). Here, by virtue of its failure to file a brief, Ocwen has violated Fed. R. Bankr. P. 8009(a)(1), which requires appellant to file a brief within fifteen days after the appeal. Moreover, on August 10, 2006, Appellant failed to appear and show cause as to why his case should not be dismissed, as I had ordered him to do by way of an Order dated July 13, 2006. Therefore, in light of Ocwen's neglect of and failure to prosecute its appeal, his appeal is dismissed.

## III. CONCLUSION

For the reasons stated above, Appellant's appeal is dismissed. The case is now closed.

/s/ Freda L. Wolfson  
Honorable Freda L. Wolfson  
United States District Judge

Dated: August 17, 2006